

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition No.:** 49-701-12-1-5-00305  
**Petitioner:** Douglas W. Pool  
**Respondent:** Marion County Assessor  
**Parcel No.:** 7010780  
**Assessment Year:** 2012

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. Petitioner initiated his assessment appeal for 2012 with the Marion County Property Tax Assessment Board of Appeals (“PTABOA”) on January 28, 2013.<sup>1</sup> On December 19, 2014, the PTABOA issued its final determination sustaining the assessment. Petitioner then filed a Form 131 petition on February 12, 2015.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. The Board’s hearing was scheduled for 11:00 a.m. on September 29, 2016, at the Indiana Government Center South (Conference Room 8), located at 302 West Washington Street in Indianapolis. Notices of Hearing were mailed to the parties on August 4, 2016 (a copy of proof of mailing is included as Board Exhibit D). The ALJ verified that the Notices of Hearing were not returned as undeliverable.
4. Petitioner and the Board’s Administrative Law Judge, Dalene McMillen (“ALJ”), were prepared to proceed with the hearing as scheduled. However, Respondent did not appear and did not request a continuance or contact the Board or the ALJ prior to the hearing. Petitioner and the ALJ waited in the conference room for more than 30 minutes before proceeding.

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<sup>1</sup> Petitioner also initiated assessment appeals for 2009, 2010, and 2011, which he withdrew.

## Facts

5. The property under appeal consists of a single-family home located at 5919 East Julian Avenue in Indianapolis.
6. For 2012, the PTABOA determined the following values:  
  
Land: \$15,000      Improvements: \$92,200      Total: \$107,200.
7. At the hearing, Petitioner requested that the assessed value be reduced to the 2011 assessment level of \$89,700.

## Record

8. The official record for this matter is made up of the following:
  - a. A digital recording of the hearing
  - b. Exhibits:<sup>2</sup>  
  
Board Exhibit A: Form 131 Petition  
Board Exhibit B: Notice of Hearing  
Board Exhibit C: Hearing Sign-in Sheet  
Board Exhibit D: Proof of Mailing
  - c. These Findings and Conclusions.

## Burden of Proof

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

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<sup>2</sup> Neither party presented any exhibits.

11. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The assessed value increased from \$89,700 to \$107,200 between 2011 and 2012. Because the increase was greater than 5%, Respondent had the burden of proving the 2012 assessment is correct.

### **Summary of the Parties’ Contentions**

14. As stated above, Respondent failed to appear at the hearing. Further, he did not submit any evidence to show the 2012 assessment is correct.
15. Petitioner contends because Respondent did not appear or present any probative evidence to support the 2012 assessment, the assessment should be reduced to the previous year’s level.

### **Analysis**

16. Respondent failed to make a prima facie case to support the 2012 assessment. The Board reached this decision for the following reasons:
  - a. Real property is assessed based on its “true tax value,” which means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut

the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.

- b. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f).
- c. Respondent failed to appear at the hearing and failed to provide any evidence to establish a prima facie case that the 2012 assessed value is correct. The Board bases its decision on the evidence presented and the issues raised during the hearing and will not make a case for Respondent. *See Whitley Products, Inc. v. State Bd. Of Tax Comm'rs*, 704 N.E.2d 1113, 1118-1119 (Ind. Tax Ct. 1998).

### **Conclusion**

- 17. Respondent failed to appear and failed to make a prima facie case that the 2012 assessment was correct. Therefore, the property's assessment must revert to its 2011 assessed value of \$89,700.

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the Board determines that the 2012 assessed value must be changed.

ISSUED: November 16, 2016

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.